

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant	: Mark Zimmer		
Filed	: April 16, 2004		
TC/A.U.	: 2624		
Examiner	: Mia M. Thomas		
Docket No.	: P3355US1 (119-0035US)		
Customer No.	: 29855		
Title	: IMPROVED BLUR COMPUTATION ALGORITHM		

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is filed to request reconsideration of the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) for Patent No. 7,636,489 issued 22 December 2009. A fee for this Petition was paid with a Petition filed 20 January 2010 that should be applied to this Petition. Applicants believe that no additional fees are due in connection with this Petition. However, should any fees or refunds be due, the Office is authorized to charge or credit such fees or refunds to Deposit Account No. 501922, referencing attorney docket number 119-0035US.

Remarks begin on page 2 of this paper.

REMARKS

Applicants have received a decision on the petition filed 20 January 2010 which indicates a total of 1322 days of Patent Term Adjustment. However, Applicants believe the calculated Patent Term Adjustment decision was in error stating "B Delay does not include any time period consumed by appellate review." In particular the decision stated:

Applicant asserts the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") is 981 days. Pursuant to 35 U.S.C. § 154(b)(1)(B)(ii), B Delay does not include any time period consumed by appellate review. Therefore, B Delay does not include the 360 days consumed by appellate review as a result of the Notice of Appeal filed August 12, 2008. B Delay is 621 days after removal of the time period consumed by appellate review.

Decision on petition filed 1/20/2010 mailed 01 July 2010.

Based on 37 C.F.R. 1.703(b)(4) the time consumed by appellate review which is not included in B-Time is defined as follows:

The number of days, if any, in the period *beginning on the date on which a notice of appeal* to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and *ending on the date* of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, *or on the date of mailing of either an action under 35 U.S.C. 132*, or a notice of allowance under 35 U.S.C. 151, *whichever occurs first*, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

37 C.F.R. § 1.703(b)(4) (emphasis added).

In the petition decision on hand, the 360 days consumed by appellate review should not be counted from 8/12/2008 until 8/6/2009 (notice of allowance) but should only be counted from 8/12/2008 until 1/26/2009 (mail date of action under 35 U.S.C. 132) which is only 167 days and thus, the B-Time of 621 days mentioned in the petition decision should actually be 814 days.

The previous petition decision summarized the final calculation as follows:

In view of the prior discussion, the patent term is 1322 days, which is the sum of 746 days of A Delay and 621 days of B Delay reduced by 45 days of overlapping delay.

Decision on petition filed 1/20/2010 mailed 01 July 2010.

The corrected calculation of PTA based on the previously provided summary would then become 746 days of A Delay and 814 days of B delay reduced by 45 days of overlapping delay which results in a PTA of 1515 days.

However, Applicants believe the correct calculation based on Applicants previous arguments in petition filed 20 January 2010 and updated based on the discussion above regarding time spent in appellate review should be as follows:

669 days of A-time and 814 days of B-Time represented by the 981 days previously presented on 1/20/2010 now adjusted by a reduction of the 167 days of appellate review as explained above.

Conclusion

A-Time of 669 days plus B-Time of 814 days minus 0 days for delays attributable to Applicants, results in the correct calculation for PTA being ***1483 days***. For the reasons stated above, Applicants respectfully request that the PTA be adjusted to ***1483 days*** and a Notice of Correction be issued. If appropriate, the Office should not hesitate to contact the undersigned by phone to discuss this case.

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Respectfully submitted,

/William M. Hubbard/

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